

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2308194
Decision Date:	10/19/2023	Hearing Date:	10/17/2023
Hearing Officer:	Emily T. Sabo	Record Open to:	

Appearance for Appellant:



Appearance for MassHealth:

Mary-Jo Elliott, RN, Optum



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Dismissed in part, Denied in part	Issue:	Prior Authorization, Personal Care Attendant Services, Aid Pending
Decision Date:	10/19/2023	Hearing Date:	10/17/2023
MassHealth's Rep.:	Mary-Jo Elliott, RN	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South (Remote)	Aid Pending:	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated August 22, 2023, MassHealth modified the Appellant's prior authorization request for personal care attendant (PCA) services from the requested 106 hours of day/evening PCA assistance per week, and 2 hours of PCA assistance at night, every night, to 90 hours of day/evening PCA assistance per week, and 2 hours of PCA assistance at night (Exhibit 1). The Appellant filed this appeal with the Board of Hearings (BOH) in a timely manner on September 11, 2023 (130 CMR 610.015; Exhibit 2). Modification of a prior authorization request is valid grounds for appeal to the Board of Hearings (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the Appellant's prior authorization request for PCA services.

Issue¹

As MassHealth's action was based on a re-evaluation of the Appellant's prior authorization request for PCA services, is the Appellant eligible for the continuation of her benefits pending appeal pursuant to 130 CMR 610.036?

Summary of Evidence

The Appellant appeared at the hearing via telephone and verified her identity. She was also represented by [REDACTED]. The MassHealth representative, who is a Registered Nurse and clinical appeals representative, also appeared via telephone. At the hearing, the parties agreed to the following modifications of the Appellant's request for PCA services for the prior authorization period at issue (August 25, 2023, to August 24, 2024):

1. Assistance with Oral Medications: Approved at 8 minutes, 3 times a day, 7 days a week;
2. Other Healthcare Needs, TENS Unit Treatment: Approved at 7 minutes, 7 times a day, 7 days a week; and
3. Medical Transportation: Approved at 797 minutes per week.²

The MassHealth representative testified that the notice modifying the Appellant's prior authorization request for PCA services was dated August 22, 2023, and was scheduled to be implemented August 25, 2023.

When the Appellant filed her appeal, she requested that she receive the continuation of her benefits, pending her appeal. The Appellant renewed this request at the hearing. The Appellant provided evidence and testimony that the envelope in which she received the notice of MassHealth's modification of the prior authorization request for PCA services was postmarked on August 30, 2023. The Appellant testified that she received the notice on September 4, 2023, and filed her appeal on September 11, 2023.

Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. MassHealth modified the Appellant's prior authorization for PCA services on August 25, 2023.
2. The notice sent to the Appellant notifying her that MassHealth modified the Appellant's prior

¹ The parties reached resolution on MassHealth's modifications to the prior authorization request for PCA services at the hearing.

² These were the only categories in dispute.

authorization request for PCA services was postmarked on August 30, 2023.

3. The Appellant filed her appeal with the Board of Hearings on September 11, 2023.

Analysis and Conclusions of Law

The MassHealth Fair Hearing Regulations provide for the continuation of benefits pending appeal at 130 CMR 610.036(A):

When the appealable action involves the reduction, suspension, termination, or restriction of assistance, such assistance will be continued until the BOH decides the appeal or, where applicable, the rehearing decision is rendered if the BOH receives the initial request for the fair hearing before the implementation date of the appealable action. If such appealable action was implemented before a timely request for a hearing, such assistance will be reinstated if the BOH receives the request for the fair hearing within ten days of the mailing of the notice of the appealable action. If the hearing officer's decision is adverse to the appellant, the appealable action will be implemented immediately, except as provided in 130 CMR 610.091(D).

Here, the appealable action at issue, MassHealth's modification of the prior authorization request for PCA services, was implemented on August 25, 2023, prior to the Appellant's request for a hearing. The Appellant provided evidence that the notice of the appealable action was mailed on August 30, 2023. Ten days after August 30, 2023, is September 9, 2023. The Appellant filed her request for a fair hearing on September 11, 2023. Accordingly, because the Board of Hearings did not receive the Appellant's request for a fair hearing within ten days of the mailing of the notice, unfortunately, she is not eligible for aid pending appeal. Her request for aid pending appeal is denied.

As stated above, at the hearing, the parties agreed to modifications in the categories of assistance with oral medications; other healthcare needs, specifically TENS unit treatment; and medical transportation for the period of August 25, 2023, to August 24, 2024. Because all of the modifications were agreed upon and resolved at the hearing, there are no longer any issues in dispute. Therefore, this appeal is dismissed. (130 CMR 610.035(A)(8)).

Order for MassHealth

If MassHealth has not already done so, make the adjustments agreed to at the hearing, as described above.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Emily T. Sabo
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Optum MassHealth LTSS, P.O. Box 159108, Boston, MA 02215

[REDACTED]